IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1217 of 2004
To
FIRST APPEAL No.1224 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE J. M. PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAND ACQUISITION OFFICER - Appellant
Versus
HIRA HAKKA & ORS. - Respondents

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Appearance :

MR SS SHAH, GP for Appellant in FA Nos.1217 to 1220 of 2004. ***AND***
MS KRINA P CALLA, AGP for Appellant in FA Nos.1221 to 1224 of 2004.
MR GM AMIN for Original Claimants.
RULE SERVED for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 09/01/2007

COMMON ORAL JUDGMENT

(Per: Mr. Justice J. M. Panchal)

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908 is the legality of common judgment and award dated April 1, 2003 rendered by the learned 4th Joint Civil Judge (Senior Division), Bhavnagar, in Land Reference Case Nos.162 of 1998 to 169 of 1998 by which the claimants have been awarded additional amount of compensation at the rate of Rs.25/- per square metre for *bagayat* lands and Rs.15/- per square metre for *jirayat* lands over and above compensation paid to them by the Special Land Acquisition Officer at the rate of Rs.1.80 Paise per square metre for *bagayat* lands and Rs.1.20 Paise per square metre for *jirayat* lands, by his award dated September 15, 1997.

2. The Executive Engineer, Saurashtra Branch Canal, Division - 26, Botad, proposed to the State Government to acquire the lands situated in the *sim of* village: Samdhiyala, Taluka: Botad, District: Bhavnagar, for the

public purpose of construction of canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Samdhiyala specified in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued which was published in the official gazette on July 12, 1994. The land-owners were thereafter served with the notices under Section 4 of the Act. On service of notice, they opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of Village: Samdhiyala, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the

official gazette on August 7, 1995. The interested persons were thereafter served with the notices for determination of compensation payable to them. On the basis of materials placed before him, the Special Land Acquisition Officer by his award dated September 15, 1997 offered compensation to the claimants at the rate of Rs.18,000/- per hectare, i.e. Rs.1.80 per square metre, for *bagayat* lands, and Rs.12,000/- per hectare, i.e. Rs.1.20 per square metre for *jirayat* lands though the claim of the claimants was to award them compensation at the rate of Rs.50/- per square metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Bhavnagar, where they were

registered as Land Reference Case Nos.162 of 1998 to 169 of 1998.

3. On behalf of the claimants, witness Himatbhai Muljibhai was examined at Exhibit 29. The witness mentioned in his testimony that the lands acquired were even and highly fertile. According to him, each claimant was able to take different crops in three different seasons. The witness asserted that each claimant was taking crop of cotton during the monsoon season whereas crops of cumin-seeds and wheat were being raised during winter season and crop of groundnut was being raised in summer season. The witness mentioned before the Court that each claimant was able to take crop of 50 maunds of cotton as well as 20 maunds of cumin-seeds and 60 maunds of wheat as well as 40 maunds of groundnut. According to the said witness, all the claimants were selling their agricultural produces at Botad Marketing Yard. The witness produced 7/12 extracts relating to the lands acquired at Exhibits 17 to 23. The witness also produced

extracts from the Register of Botad Marketing Yard indicating as to what were the prices of cotton, cumin-seeds, wheat, groundnut, etc. at the relevant time.

This witness was cross-examined at length on behalf of the acquiring body. In cross-examination, the witness admitted that rainy season was irregular in the area. The witness further admitted that he had no documentary evidence to indicate that each claimant was able to raise crop of 50 maunds of cotton or crop of 20 maunds of cumin-seeds, etc. Though the witness maintained in his cross-examination that the claimants were being issued necessary receipts indicating weight of crop sold by the Marketing Yard, he was not able to produce any receipt in support of his claim that each claimant was able to raise crop of 50 maunds of cotton or 40 maunds of cumin-seeds etc. The witness further admitted that Botad town was at a distance of 3 to 4 Kilometres from the acquired lands.

4. On behalf of the acquiring authority, witness Manjibhai Jethabhai Deora, who was then Incharge Deputy Executive Engineer, was examined at Exhibit 43. The witness mentioned before the Court that the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the market value of the lands acquired and, therefore, the claimants were not entitled to enhanced compensation. The witness further produced sale deeds at Exhibits 37 to 41 to establish that the value of the lands acquired, as determined by the Special Land Acquisition Officer, was just and no case was made out by the claimants for grant of enhanced compensation.

Though this witness was cross-examined by the learned counsel for the claimants, no suggestion was made to the witness regarding income derived from the sale of agricultural produces. The record further shows that the claimants had also produced previous award of

the Reference Court relating to the lands of Botad town at Exhibit 25 in support of their claim for enhanced compensation.

5. On appreciation of evidence adduced by the parties, the Reference Court held that it was not established by the claimants that they were raising crops of wheat, cumin-seed, groundnut, etc. on the acquired lands. According to the Reference Court, what was established satisfactorily by the claimants was that each claimant was raising crop of cotton. The Reference Court further deduced that the previous award of the Reference Court relating to the lands of Botad town was not a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court also held that the sale deeds produced by the acquiring authority at Exhibits 37 to 41 were also not relevant for the purpose of determining the market value of the lands acquired in the instant case as they were situated at a distance

from the acquired lands. After recording above mentioned findings, the Reference Court, without assigning any reason, held in paragraph 19 of the impugned award that the claimants are entitled to additional amount of compensation at the rate of Rs.25/- per square metre for their *bagayat* lands and Rs.15/- per square metre for their *jirayat* lands by the impugned award giving rise to the above numbered appeals.

6. This Court has heard Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, and Mr.G.M.Amin, learned counsel for the claimants, in each appeal at length and in great detail. This Court has also considered the evidence adduced by the parties before the Reference Court.

7. As explained in ***Special Land Acquisition Officer, Davangere vs. V.P.Veerabhadarappa, A.I.R. 1984 SC 774,*** the function of the Court in awarding compensation under the Act is to ascertain the market value

of the land at the date of the notification under Section 4(1) of the Act and the methods of valuation are: (1) opinion of experts; (2) the prices paid within a reasonable time in *bona fide* transactions of purchase or sale of the lands acquired or the lands adjacent to those acquired and possessing similar advantages; and, (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. What is emphasised by the Supreme Court in the said decision is that normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. Here in this case, the Court finds that the enhanced compensation was not claimed by the claimants on the basis of opinion of the experts nor on the basis of prices paid within a reasonable time in *bona fide* transactions of purchase or sale of the lands acquired or lands adjacent to those acquired and possessing

similar advantages. However, the acquiring authority had produced sale deeds at Exhibits 37 to 41 in order to justify the award made by the Special Land Acquisition Officer. A perusal of Exhibits 37 to 41 indicates that the lands covered by those sale deeds were situated at a distance from the lands acquired in the instant case. Further, no evidence could be adduced on behalf of the acquiring authority that the lands, which were subject matter of the sale deeds at Exhibits 37 to 41, were similar to the lands acquired in the instant case. It is true that in view of a five-judge Constitution Bench judgment rendered in ***Cement Corporation of India Limited vs. Purya & Others, (2004) 8 SCC 270,*** sale deeds produced by the acquiring authority will have to be considered by the Court. However, the contents of the documents produced under Section 51-A cannot be treated as conclusive proof of the transaction nor it is mandatory for the Court to raise any presumption regarding the genuineness of the transaction contained therein. No reliable evidence could be

adduced by the acquiring authority to persuade the Court to act upon the prices mentioned in Exhibits 37 to 41. Therefore, this Court is of the opinion that the Reference Court was justified in not placing reliance on Exhibits 37 to 41 while determining the market value of the lands acquired in the instant case. Similarly, the Reference Court was justified in not relying upon the previous award of the Reference Court relating to the lands of Botad town because as per the evidence adduced by the acquiring authority, Botad town is situated at a distance of 7 Kilometres away from the acquired lands and no evidence could be adduced by the claimants that the lands, which were subject matter of the previous award, were similar in all respects to the lands acquired in the instant case.

8. Once the sale deeds and the previous award relating to the lands of Botad town are taken out of consideration, the Court is left with the evidence adduced by the claimants relating to the net income they derived from the

sale of agricultural produces. The assertion made by the witness for the claimants that each claimant was able to raise four crops in a year could not be made good. It could not be satisfactorily established by the claimants that each claimant was raising crop of cumin-seed or wheat or groundnut over and above the crop of cotton. The finding recorded by the Reference Court that it is satisfactorily established that the claimants were raising only the crop of cotton and not other crops, is based on appreciation of the evidence, which is not demonstrated to be erroneous by the learned counsel for the claimants. Therefore, the compensation payable to the claimants will have to be determined on the basis that each claimant was able to raise crop of cotton on his acquired land.

9. In ***State of Gujarat & Ors. vs. Rama Rana & Ors., (1997) 2 SCC 693,*** neither the claimants nor the Government had taken any step to adduce the best evidence. However, the

Supreme Court refused to reject the oral evidence of the witness on that ground alone. The Supreme Court has emphasised therein that the Court has statutory duty to the society to subject the oral evidence to great scrutiny and determine the market value of the lands acquired after applying the test of normal prudent man, i.e. whether he would be willing to purchase the land at the rates proposed by the Court. What is emphasised by the Supreme Court in the said decision is that on the touchstone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation.

Applying the principles laid down in the aforesaid decision to the facts of the instant case, this Court finds that the assertion made by the witness for the claimants that each claimant was able to raise crop of 50 maunds of cotton per *vigha* cannot be accepted because no documentary evidence could be produced by him to support the said claim in

spite of the statement made by him that each claimant was issued receipt by the Market Yard when cotton was taken for sale to the Market Yard. Having regard to the paucity of evidence adduced by the claimants and the acquiring authority, this Court is of the opinion that interest of justice would be served if it is held that it is proved that each claimant was raising crop of 25 maunds of cotton per year per *vigha* on the lands acquired. The witness for the claimants had produced extracts from the Register maintained by Botad Market Yard indicating the prices of cotton prevailing at the relevant time at Exhibit 28. A perusal of Exhibit 28 indicates that two different prices have been mentioned therein for two different qualities of cotton. The witness for the claimants has not stated that the quality of the cotton raised by each claimant on his acquired land was such, which was fetching higher price as mentioned in Exhibit 28. Therefore, it will have to be held that the price of the cotton grown by the claimants was Rs.1823/- per

quintal. In order to arrive at a price per *maund,* the said figure will have to be divided by five and, therefore, it is held that the price of the cotton grown by the claimants on their acquired lands at the relevant time was Rs.364.66 Paise per *maund,* which is rounded off to Rs.364/- per *maund* for the purpose of calculation. Calculated in this manner, it becomes evident that each claimant was receiving Rs.9,100/- as income from the sale of cotton grown on his acquired land. In ***Special Land Acquisition Officer (supra),*** the Supreme Court has held that 50% should be deducted towards the cultivation cost and, therefore, if 50% is deducted from Rs.9,100/-, net income, which was derived by each claimant, would come to Rs.4,550/- per *vigha* per year. The Supreme Court has also emphasised in the said decision that normally multiplier of ten should be adopted for the purpose of capitalization. If multiplier of 10 is applied to the figure of Rs.4,550/-, the net figure would be Rs.45,550/- per *vigha* per year. In order to determine the price of the

lands acquired per square metre, the said figure will have to be divided by 2350 and if it is so divided, it becomes clear that the claimant would be entitled to compensation at the rate of Rs.19.36 paise per square metre, which figure is rounded off to Rs.20/- per square metre for the sake of convenience.

10. Thus, on reappreciation of the evidence adduced by the parties, this Court is of the opinion that the claimants in all would be entitled to compensation at the rate of Rs.20/- per square metre for *bagayat* lands and Rs.15/- per square metre for *jirayat* lands because for the purpose of determining the market value of *jirayat* lands, 25% has to be deducted from the price of *bagayat* lands in view of the decision of the Supreme Court in the case of ***Kantaben Manibhai Amin & Anr. vs. The Special Land Acquisition Officer, Baroda, A.I.R. 1990 SC 103***.

In view of the above discussion, the appeals will have to be allowed in part.

11. For the foregoing reasons, all the appeals succeed in part. The common judgment and award dated April 1, 2003 rendered by the learned 4th Joint Civil Judge, (S.D.), Bhavnagar, in Land Reference Case Nos.162 of 1998 to 169 of 1998 awarding additional amount of compensation to the claimants at the rate of Rs.25/- per square metre for *bagayat* lands and Rs.15/- per square metre for *jirayat* lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.80 Paise per square metre for *bagayat* lands and Rs.1.20 Paise per square metre for *jirayat* lands by his award dated September 15, 1997 is hereby modified and it is held that the claimants in all would be entitled to the compensation at the rate of Rs.20/- per square metre for *bagayat* lands and Rs.15/- per square metre for *jirayat* lands. Other benefits which are conferred on the claimants by the impugned award are not interfered with at all. The appeals are allowed to the extent indicated hereinabove only. There

shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra